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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/955,418	09/17/2001	Stephen F. Gass	SDT 329	1667
27630	7590	12/02/2003	EXAMINER	
SD3, LLC 22409 S.W. NEWLAND ROAD WILSONVILLE, OR 97070			DRUAN, THOMAS J	
			ART UNIT	PAPER NUMBER
			3724	12

DATE MAILED: 12/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/955,418

Applicant(s)

GASS ET AL.

Examiner

Thomas J. Druan, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,9-12,14-19 and 23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,9-12,14-19 and 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 11. 6) ☐ Other: _____

DETAILED ACTION

1. This action is in response to Applicant's amendment received on 22 August 2003. It is understood that the claims marked with the term "Withdrawn" are intended to be cancelled, and therefore they have been cancelled. Normally, the term "withdrawn" refers to non-elected, still-pending claims.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 1, 9-12 & 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 9, 11 and 12 each refer to "such contact" in the last lines of each respective claim, though "contact" per se has not been explicitly claimed. Instead, a predetermined change in at least one property of an electrical signal is detected, and this change is merely interpreted as contact between a user and a blade. As such, the predetermined change in a property of the signal need not be caused by contact of the blade in order for an interpretation of such change to be that contact between a user

and the blade has taken place. Therefore, referring to "such contact" is unclear as proper antecedent basis for the contact is not explicitly claimed.

Claim Rejections - 35 USC § 103

5. Claims 1, 9, 10, 15-17 & 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,637,289 to Ramsden in view of US 3,785,230 to Lokey.

Ramsden discloses the invention substantially as claimed, including an up-cut chop saw, comprising: a frame 2 having a work surface 18 adapted to support a workpiece; a rotatable blade 70 on spindle 14 configured to cut workpieces by moving from below the surface of the frame to at least partially above the surface of the frame (column 2, lines 55-58); at least one motor 10 configured to drive the blade; at least one actuating mechanism 28, a fluid-actuated cylinder, operable to move the blade upward at least partially above the surface of the frame and also downwards after the blade has been moved above the surface of the frame; a detection system 62 configured to detect one or more dangerous conditions between a user and the blade; and a reaction system 124 configured to stop the upward motion of the blade and to retract the blade below the surface of the frame upon detection of a dangerous condition by the detection system. Ramsden does not disclose a detection system that imparts an electrical signal to an electrically isolated blade, where the electrical signal is monitored to for a predetermined change in the electrical signal signaling a dangerous condition between a user and the blade. Lokey teaches the use of a blade 13 held on insulating washers W that insulate the blade from the frame in order to isolate the blade electrically from the frame, and to monitor an electrical signal imparted onto the blade in order to detect

a dangerous condition between a user and the blade. It would have been obvious to one skilled in the art to use the insulating washers and monitoring means of Lokey with the detection system of Ramsden in order to increase the safety of the device of Ramsden.

6. Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ramsden in view of Lokey in further view of US 3,946,631 to Malm.

Ramsden in view of Lokey discloses the invention as claimed, but does not disclose a brace member and a brake mechanism configured to engage the brace member to stop upward motion of the blade. Malm teaches the use of brace member 308 that is engaged by brake mechanism 306 to apply pressure on brace member 308 to stop upward motion of the blade and to move the blade away from the cutting zone. It would have been obvious to one skilled in the art to use the brace member and brake mechanism of Malm with the device of Ramsden in view of Lokey in order to stop upward motion of the blade and to move the blade away from the cutting zone.

7. Claims 18 & 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ramsden in view of Lokey.

Ramsden in view of Lokey disclose the invention substantially as claimed, but uses pneumatic cylinders as opposed to hydraulic cylinders. The examiner takes Official Notice that it would have been obvious to replace the pneumatic cylinders of Ramsden in view of Lokey with hydraulic cylinders and a corresponding control system

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since hydraulic cylinders are generally more powerful than pneumatic cylinders and can lift heavier cutting apparatus.

8. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ramsden in view of Lokey in further view of US 1,551,900 to Morrow.

Ramsden in view of Lokey discloses the invention substantially as claimed but lacks a spindle that is electrically insulated from the frame. Morrow teaches that any or all of the components between a blade and ground (or grounded structure) may be insulated as long as the blade can be energized by an electrode through a conductive material (page 1, lines 74-88). Therefore, it would have been obvious to isolate both the spindle and the blade from the since placement of electrical insulation is arbitrary as long as the cutting tool can accept an electrical signal, and placing the drive electrode near the blade shaft and away from the blade allows the drive electrode to be placed a safe distance from the blade.

Double Patenting

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 1, 15, and 23 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 16 of copending Application No. 09/929,235 in view of Lokey. Claim 16 of copending Application No. 09/929,235 discloses the invention substantially as claimed, including a frame, rotatable blade, adjustment mechanism, detection system, and reaction system, but lacks mention of electrically isolating the blade, and imparting an electrical signal onto the blade to monitor the electrical signal for a predetermined change. Lokey teaches the use of a blade 13 held on insulating washers W that insulate the blade from the frame in order to isolate the blade electrically from the frame, and to monitor an electrical signal imparted onto the blade in order to detect a dangerous condition between a user and the blade. It would have been obvious to one skilled in the art to use the insulating washers and monitoring means of Lokey with the detection system of claim 16 of copending Application No. 09/929,235 in order to increase the safety of the device.

This is a provisional obviousness-type double patenting rejection.

11. Claims 1, 15 & 23 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 09/929,238 in view of Ramsden and Lokey. Claim 1 of copending Application No. 09/929,238 discloses the invention substantially as claimed, but lacks explicit mention of an up-cut saw having an electrically isolated blade. Ramsden and

Lokey teach an up-cut saw having an electrically isolated blade and a detection system that monitors an electrical signal imparted onto the blade for a predetermined change in the electrical signal indicating a dangerous condition between a user and the blade in order to increase the safety of the up-cut saw. Therefore, it would have been obvious to add the specific structure of the up-cut saw of Ramsden with the electrically isolated blade and monitoring means of Lokey in order to increase the safety of the device of claim1 of copending Application No. 09/929,238.

This is a provisional obviousness-type double patenting rejection.

12. Claims 1, 15 & 23 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 09/929,242 in view of Ramsden and Lokey. Claim 1 of copending Application No. 09/929,242 discloses the invention substantially as claimed, but lacks explicit mention of an up-cut saw having an electrically isolated blade. Ramsden and Lokey teach an up-cut saw having an electrically isolated blade and a detection system that monitors an electrical signal imparted onto the blade for a predetermined change in the electrical signal indicating a dangerous condition between a user and the blade in order to increase the safety of the up-cut saw. Therefore, it would have been obvious to add the specific structure of the up-cut saw of Ramsden with the electrically isolated blade and monitoring means of Lokey in order to increase the safety of the device of claim1 of copending Application No. 09/929,242

This is a provisional obviousness-type double patenting rejection.

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37 CFR 1.56 is cited below:

37 CFR 1.56. Duty to disclose information material to patentability.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

(1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or

(2) It refutes, or is inconsistent with, a position the applicant takes in:

(i) Opposing an argument of unpatentability relied on by the Office, or

(ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

Response to Arguments

13. Applicant's arguments with respect to claims 1, 9-12, 14-19 & 23 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Druan, Jr. whose telephone number is 703-308-4200. The examiner can normally be reached on M-F (8:30-6:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 703-308-1082. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

4909
tjd

December 1, 2003


BOYER ASHLEY
PRIMARY EXAMINER